

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Tempe Elementary School District No. 3,
Defendant.

Case No.: CV11-1909-PHX DGC

CONSENT DECREE

United States Equal Employment Opportunity Commission (the “Commission” or “EEOC”) filed this action against Tempe Elementary School District No. 3 (“Tempe School” or “Defendant”) to enforce the Age Discrimination in Employment Act of 1967 (“ADEA”) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In its Complaint, the Commission alleged that Defendant promulgated and utilized a facially discriminatory Employee Early Retirement Plan which accorded greater benefits to younger employees based upon age to the disadvantage of older employees.

The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be

1 resolved finally by entry of this Consent Decree (“Decree”). The parties do not object to
2 the jurisdiction of the Court over this action and waive their rights to a hearing and the
3 entry of findings of fact and conclusions of law. The parties agree that this Consent
4 Decree is fair, reasonable, and equitable and does not violate the law or public policy.
5

6 It is hereby ORDERED, ADJUDGED AND DECREED:

7 1. This Decree resolves all claims of the Commission against Defendant,
8 including back pay, front pay, interest, injunctive relief, attorney’s fees and costs arising
9 out of the issues in this lawsuit.
10

11 2. Defendant, and its successors and assigns for the duration of this Decree, are
12 permanently enjoined from engaging in any employment practice that discriminates on the
13 basis of age against individuals 40 years of age and older.
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15 3. Defendant, and its successors and assigns for the duration of this Decree, are
16 permanently enjoined from retaliating against any employee because he or she: (i)
17 opposes or opposed discriminatory practices made unlawful by the ADEA; (ii) files or
18 filed a charge of discrimination, assists or has assisted, participates or has participated in
19 the filing of a charge of discrimination; or (iii) assists, assisted, participates or participated
20 in an investigation or proceeding brought under the Federal laws prohibiting
21 discrimination or retaliation.
22

23 4. Defendant, and its successors and assigns for the duration of this Decree,
24 shall carry out policies, practices and programs which provide equal employment
25 opportunities for individuals who are 40 years of age and older.
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MONETARY RELIEF

5. On or before July 16, 2012, Defendant shall make payment in the total amount of \$129,671.01, with interest thereon in the amount of \$18,491.01, for a total of \$148,162.53 in resolution of all claims asserted in this case. These payments shall constitute back pay and interest and be apportioned to the Claimants as set forth on Attachment A

6. The amount set forth in Paragraph 5 of this Decree shall be paid by Defendant in a check or money order payable to each of the Claimants. Each such check or money order shall be mailed directly by Defendant to each of the Claimants, no later than July 16, 2012. The employee's portion of FUTA and FICA shall be deducted from the amount designated as backpay. Defendant shall pay all payroll taxes it owes on the \$129,670.07 in back wages for the tax year during which payment is made. Defendant will be responsible for paying the employer's share of FUTA and FICA taxes and the amount shall not be taken from the settlement amount. By January 31, 2013, Defendant shall issue a United States Internal Revenue Service W2 form for the payment. No deductions shall be made from the amount designated as interest.

Within five (5) business days of the issuance of the checks or money orders, Defendant shall submit a copy of the check or money order, and related correspondence, to the United States Equal Employment Opportunity Commission, Regional Attorney, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012.

7. Defendant shall not condition the receipt of this monetary relief on any Claimant's agreement to (a) waive hisher statutory right to file a charge with any federal

1 or state anti-discrimination agency; or (b) waive his/her right to apply for a position with
2 Defendant; or (c) maintain confidentiality.

3 TRAINING

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5 8. During the term of this Decree, Defendant shall provide annual quality
6 training regarding the ADEA to all employees. Defendant shall make this annual ADEA
7 training mandatory for all employees as part of their annual training. Defendant may
8 provide this training by video presentation.

9
10 9. The trainer shall be Defendant's in-house counsel or another attorney
11 approved the EEOC. Defendant shall submit the training agenda and the date(s) of the
12 proposed training to the EEOC at least thirty (30) days prior to the proposed training.

13
14 10. In addition to the training referenced in ¶ 8, all Human Resource Personnel,
15 Supervisors, and Managers, Assistant Principals, Principals, Directors, Assistant
16 Superintendents, Superintendents and Governing Board members who have responsibility
17 for formulating policies regarding retirement and/or the reimbursement for unused leave,
18 shall have an additional sixty (60) minute training concerning how policies should be
19 drafted to conform to the Age Discrimination in Employment Act (ADEA) and the
20 regulations governing the ADEA.

21
22 11. All personnel designated in Paragraph 10 of this Decree shall both register
23 and attend the seminar-training sessions, as required. The registry of attendance shall be
24 retained by Defendant for the duration of the Decree.

25
26 12. The training shall include the subject of what constitutes age discrimination;
27 that age discrimination in the recruitment, hiring, firing, layoff, compensation, early
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1 retirement incentive plans, retirement plans, assignment or other terms, conditions or
2 privileges of employment violates the ADEA, how to prevent age discrimination; how to
3 provide a work environment free from age discrimination; to whom and by what means
4 employees may complain if they believe they have been subjected to age discrimination in
5 the workplace; Defendant's statutory obligations under the ADEA in general, and in
6 particular its obligation not to discriminate on the basis of age in its early retirement and
7 normal retirement plans and policies.
8

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10 **OTHER RELIEF**

11 13. The parties agree that Defendant has revised its Early Retirement Incentive
12 Policy and the Normal Retirement Policy. Defendant shall not reinstate the former Early
13 Retirement Incentive Plan, and the Normal Retirement Policy or adopt any other policies
14 that violate the ADEA.
15

16 14. Within sixty (60) days of the entry of this Decree, Defendant shall review
17 and modify, if necessary, all policies and practices to ensure a work environment free
18 from age discrimination for its employees and to allow employees to raise concerns or
19 complaints without retaliation about matters, whether alleged, perceived or actual, made
20 unlawful by the ADEA. These written policies will include, at a minimum:
21

22 A. A commitment to a workplace free of age discrimination and
23 retaliation;
24

25 B. Clear and complete definitions of age discrimination;

26 C. A clear and strong encouragement of persons who believe they have
27 been discriminated against on the basis of age or retaliated against to come
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1 forward;

2 D. A description of the consequences, up to and including termination,
3 that will be imposed upon violators of the policy;
4

5 E. A promise of maximum feasible confidentiality for persons who
6 believe that they have experienced age discrimination or retaliation;

7 F. An assurance of non-retaliation for witnesses of discrimination and
8 persons who believe they have been discriminated against on the basis of their age
9 and other federally-protected statutes;
10

11 G. A statement that age discrimination by all persons, including
12 management officials, supervisors, is prohibited and will not be tolerated;

13 H. The identification of specific job titles, with their telephone numbers,
14 to whom employees who have experienced age discrimination or retaliation can
15 report the age discrimination or retaliation, including a written statement that the
16 employee may report the discrimination to designated persons outside their chain
17 of management;
18

19 I. Assurances that Defendant will investigate age discrimination and
20 retaliation allegations promptly, fairly, reasonably, and effectively by appropriate
21 investigators and that appropriate corrective action will be taken by Defendant to
22 prohibit the age discrimination and retaliation.
23

24 15. Defendant shall post for the duration of this Decree, in prominent places
25 frequented by its employees, including, both at the time that this Decree becomes
26 effective and for the duration of this Decree, the Notice attached hereto as Attachment B.
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1 The Notice shall be the same type, style and size as set forth in Attachment B.

2 **REPORTING BY DEFENDANT**

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4 16. Defendant shall report in writing to the Regional Attorney of the
5 Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690, Phoenix,
6 Arizona 85012, beginning six (6) months from the date of the entry of this Decree, and
7 thereafter every six (6) months for the duration of the Decree the following information:

8 A. Any changes, modifications, revocations, or revisions to its policies
9 and procedures made pursuant to Paragraph 14 of this Decree.

10 B. Confirmation that the Notice required in Paragraph 15 of this Decree
11 was posted and the locations where it was posted.

12 C. Confirmation that Defendant's equal employment opportunity
13 training includes the topics listed in Paragraph 12 of this Decree.

14
15 17. Beginning six months after entry of this Consent Decree and every six
16 months thereafter for the duration of the Decree, Defendant shall furnish the EEOC with
17 reports reflecting the name, address and telephone number of each employee who retired
18 during the preceding six month period, his/her age, date of birth, date of retirement, job
19 title at the time of retirement, and the amount and calculations of retirement pay received.
20 The last report under this paragraph shall be submitted to the EEOC two weeks prior to
21 the date on which the Consent Decree is to expire.

22 **COSTS, DURATION AND ENFORCEMENT**

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24 18. The parties shall each bear their own costs, and attorneys' fees incurred as a
25 result of this action through the filing of this Decree.

1 19. The duration of this Decree shall be two (2) years from its entry. This Court
2 shall retain jurisdiction over this action for the duration of the Decree, during which the
3 Commission may petition this Court for compliance with this Decree.
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5 20. This Decree shall expire by its own terms at the end of twenty-four months
6 from the date of entry, without further action by the Parties.
7

8 21. If any provision(s) of this Consent Decree are found to be unlawful, only the
9 specific provision(s) in question shall be affected and the other provisions shall remain in
10 full force and effect.

11 22. The parties agree to entry of this Decree, subject to final approval by the
12 Court.
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14 **PENALTIES FOR NON-COMPLIANCE**

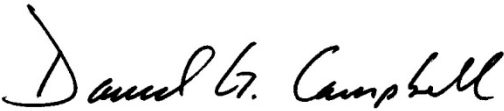
15 23. This Court shall retain jurisdiction over this action for the duration of the
16 Decree. During this time, the EEOC may petition this Court to order Defendant to
17 comply with the Decree. Should the Court determine that Defendant has not complied
18 with this Decree, appropriate relief, including extension of this Decree for such a period as
19 may be necessary to remedy Defendant's non-compliance, may be ordered.
20

21 24. If Defendant fails to comply with the monetary provisions of this Decree, it
22 shall have ten (10) business days to cure its non-compliance. Thereafter, a penalty shall
23 accrue in the amount of \$100.00 per day, until Defendant is in compliance with the
24 Decree.
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26 25. In the event that Defendant does not comply with any provision of this
27 Decree, and the Commission petitions the Court to order Defendant to comply, Defendant
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1 shall pay all costs incurred by the Commission to enforce the Decree.

2 Dated this 23rd day of May, 2012.

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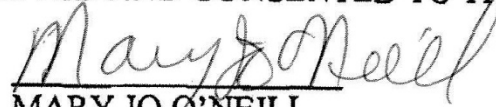
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David G. Campbell
United States District Judge
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ENTERED AND ORDERED this ____ day of _____, 2012.

DAVID G. CAMPBELL
UNITED STATES DISTRICT JUDGE


APPROVED AND CONSENTED TO THIS 17th DAY OF May, 2012:



MARY JO O'NEILL
Regional Attorney




SALLY C. SHANLEY
Supervisory Trial Attorney



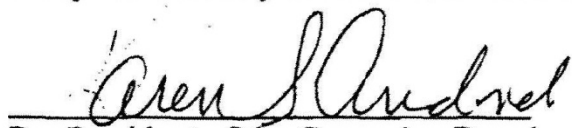
GUY DAVID KNOLLER
Senior Trial Attorney

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Phoenix District Office
3300 N. Central Ave., Suite 690
Phoenix, Arizona 85012
Attorneys for Plaintiff



GEORGIA STATON
GORDON JONES
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2901 North Central Avenue, Suite 800
Phoenix, Arizona 85012
Attorneys for Defendant Tempe
Elementary School District No. 3

Tempe Elementary School District No. 3



By: President of the Governing Board
Defendant Tempe Elementary School District No. 3

ATTACHMENT A

LAST NAME	FIRST NAME	DIFF BETWEEN PAYOUT REC'D AND CALC'D PAYOUT	INTEREST	TOTAL PAYOUT	
ANDERSON	DIANA	\$ 20.82	\$ 2.52	\$ 23.34	
APARICIO	ERMA	\$ 5,292.02	\$ 641.67	\$ 5,933.69	
BARAJAS	MARIA	\$ 251.97	\$ 14.15	\$ 266.12	
BARTELS	LINDA	\$ 2,359.01	\$ 359.27	\$ 2,718.28	
BURSTEIN	GAIL	\$ 312.98	\$ 24.26	\$ 337.24	
COOK	MARJORIE	\$ 2,082.01	\$ 252.45	\$ 2,334.46	
DAVIS	ELI	\$ 767.81	\$ 141.43	\$ 909.24	
DICKES	SHELIA	\$ 4,103.92	\$ 452.06	\$ 4,555.98	
ELLING	JANET	\$ 545.96	\$ 66.20	\$ 612.16	
ESTES	LINDA	\$ 514.04	\$ 94.69	\$ 608.73	
FELNAGLE	DEBORAH	\$ 1,660.88	\$ 111.00	\$ 1,771.88	
FOLEY	MARY	\$ 20,538.53	\$ 3,783.25	\$ 24,321.78	
FRANK	KATHRYN	\$ 522.76	\$ 98.29	\$ 621.05	
GALARZA	ALEJANDRA	\$ 65.38	\$ 4.37	\$ 69.75	
GERBER	LINDA	\$ 908.58	\$ 110.17	\$ 1,018.75	
GIBBONS	VICKI	\$ 11,849.76	\$ 918.39	\$ 12,768.15	
GOODMAN	SAMUEL	\$ 785.34	\$ 60.87	\$ 846.21	
HELM	MICHELLE	\$ 198.64	\$ 36.59	\$ 235.23	
JOHNSON	FAITH	\$ 7,695.87	\$ 1,417.60	\$ 9,113.47	
JOHNSON	DOROTHY	\$ 8.30	\$ 1.53	\$ 9.83	
KEHOE	ADRIENNE	\$ 365.58	\$ 67.34	\$ 432.92	
KILLION	SHERRY	\$ 1,184.24	\$ 91.78	\$ 1,276.02	
KING	VERONICA	\$ 241.14	\$ 49.42	\$ 290.56	
MACKENZIE	JANICE	\$ 106.85	\$ 12.96	\$ 119.81	
MALY	MARYJO	\$ 10,142.87	\$ 1,868.34	\$ 12,011.21	
MATHER	JUDY	\$ 19.25	\$ 2.33	\$ 21.58	
MCCLELLAN	CYNTHIA	\$ 418.77	\$ 32.46	\$ 451.23	
MIRANDA	ALICE	\$ 39.83	\$ 3.09	\$ 42.92	
MOORE	BARBARA	\$ 1,843.13	\$ 142.85	\$ 1,985.98	
NAVARRO	STEPHANIE	\$ 3,787.31	\$ 459.22	\$ 4,246.53	
NICHOLAS	KATHY	\$ 614.87	\$ 102.50	\$ 717.37	
NORTH	KATHLEEN	\$ 329.70	\$ 54.96	\$ 384.66	
PARKER	EILEEN	\$ 2,129.83	\$ 392.32	\$ 2,522.15	
PARRA	ANN	\$ 12,702.40	\$ 984.47	\$ 13,686.87	
PARRISH	DONNA	\$ 278.08	\$ 33.72	\$ 311.80	
PEARSON	KAREN	\$ 2,482.58	\$ 246.17	\$ 2,728.75	
ROUPE	PEGGY	\$ 14,720.81	\$ 2,711.61	\$ 17,432.42	
RYBACKI	MARY	\$ 22.28	\$ 2.70	\$ 24.98	
SALAS	THOMAS	\$ 1,560.77	\$ 120.96	\$ 1,681.73	

LAST NAME	FIRST NAME	DIFF BETWEEN PAYOUT REC'D AND CALC'D PAYOUT	INTEREST	TOTAL PAYOUT	
STEER	GENE	\$ 1,477.66	\$ 272.18	\$ 1,749.84	
STEVENS	JOEL	\$ 1,141.49	\$ 138.46	\$ 1,279.95	
STEVENS	SHARON	\$ 1,070.29	\$ 82.95	\$ 1,153.24	
STONE	KAREN	\$ 1,061.74	\$ 82.29	\$ 1,144.03	
UNDERDOWN	EMILY	\$ 2,037.86	\$ 247.10	\$ 2,284.96	
VEINE	DIANE	\$ 5,754.07	\$ 1,059.91	\$ 6,813.98	
WALMSLEY	SANDRA	\$ 1,456.05	\$ 268.21	\$ 1,724.26	
WEEKS	PAULA	\$ 13.47	\$ 2.25	\$ 15.72	
WHITMORE	CHERYL	\$ 1,643.43	\$ 302.72	\$ 1,946.15	
WALSH	BARBARA	\$ 540.08	\$ 65.49	\$ 605.57	
		\$ 129,671.01	\$ 18,491.52	\$ 148,162.53	

ATTACHMENT B

**NOTICE TO ALL EMPLOYEES OF
TEMPE ELEMENTARY SCHOOL DISTRICT NO. 3.**

It is unlawful under federal law, the Age Discrimination in Employment Act (ADEA) and state law to discriminate against an employee on the basis of age. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

TEMPE Elementary School District No. 3 will not discriminate against any employee on the basis of age and will not retaliate against any employee particularly in its Normal Retirement Plan and its Early Retirement Incentive Plan, which have been revised in order to comply with the ADEA.

If you believe you have been discriminated against by Tempe Elementary School District No. 3 you have the right to seek assistance from:

- (1) EEOC, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012, (602) 640-5000; or
- (2) Arizona Civil Rights Division (ACRD) of the Attorney General's Office, 1275 W. Washington, Phoenix, Arizona, 85007, (602) 255-5263.

You also have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of Tempe Elementary School District No. 3. for (1) opposing discriminatory practices made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation or proceeding brought under the ADEA. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the ACRD at the address or telephone numbers listed above.

Dated: _____

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